

However, the Commission's conclusion that non-telecommunications carriers -- who are not obligated to contribute to the support mechanisms -- be entitled only to reimbursement⁴³ points again to the problem that Ameritech noted above concerning defining non-telecommunications services as eligible services in the first instance. Again, the fact that non-telecommunications carriers do not contribute to the support of universal service is indicative of the fact that including their services as eligible for support is not competitively neutral.

V. HEALTH CARE PROVIDERS.

A. Services Eligible for Support.

Section 254(h)(1) provides that a telecommunications carrier shall provide services to a public or non-profit health care provider serving rural areas those telecommunications services which are "necessary for the provision of health care services" at rates reasonably comparable to those charged for similar services in urban areas. The Joint Board examined comments submitted on the issue of which services were necessary for the provision of health care and concluded only that the Commission should seek additional information on the telecommunications needs of rural health care providers and the most cost effective way to provide those services.⁴⁴

In response to that solicitation, Ameritech would note that there is little reason to conclude that services that require a bandwidth higher than 1.544 Mbps are particularly

⁴³ Id.

⁴⁴ Id. at ¶

useful at this time for telemedicinal purposes -- at least not to such an extent that the Commission should permit health care providers unfettered discretion in requesting such services. It is Ameritech's experience that there are a number of telemedicinal applications that utilize services at speeds ranging from 384Kbps to 1.544Mbps, and that services with speeds up to and including that range should satisfy the overwhelming majority of applications.

It should be made clear, however, that bedside services -- patient telephones in hospital applications -- are not included in the definition of services "necessary" for the provision of health care. While Ameritech is not minimizing the fact that such telephone service could make the patient's stay in a hospital more pleasant, the same could be said of a television set. It should be obvious that Congress did not intend either to be subsidized by universal service funds.

B. Determining the Urban Rate.

The essence of supporting health care services in rural areas lies in the statute's prescription that such service providers be required to pay only "rates that are reasonably comparable to rates charged for similar services in urban areas."⁴⁵ In this regard, the Joint Board appropriately recommended that the comparable rate be the "highest tariffed or publicly available rate actually being charged to commercial customers" within the nearest large city in the state.⁴⁶

It is important, however, to emphasize that the statute requires only that health care providers pay reasonably comparable rates -- not that their total charges for

⁴⁵ § 254(h)(1)(A).

⁴⁶ Recommended Decision at ¶ 667.

telecommunications services equal those paid by their urban counterparts. Ameritech strongly disagrees with the Joint Board's conclusion that, where distance-based charges are in excess of those paid by urban customers, those charges should be made comparable.⁴⁷ The thrust of § 254 is to equalize rates between urban and rural customers, not to equalize charges. In fact, § 254(g) requires providers or interexchange telecommunications services to charge rural customers rates that are no higher than those charged to their urban subscribers. Thus, if the urban rate is \$1 per mile or 10 cents per minute, rural customers cannot be charged \$2 per mile or 15 cents per minute. The statute clearly does not require that a telecommunications service provider must adjust the bottom line of its bills or "urbanize" distances in rural areas to make sure that the total amount paid by a rural customer does not exceed the total amount paid by an urban customer.

For that same reason, the demand for "toll free" Internet access for rural health care providers is also without merit. To the extent that toll services are involved, § 254(g) already requires that rates paid by all rural customers be comparable to those rates provided by urban customers. Section 254(h) requires nothing more.

In that regard, the Commission should clarify that, if a rural health care provider requests an eligible telecommunications service that is not yet available in the rural area, the telecommunications provider is not precluded from charging the same amount of any special construction charges that would be assessed to urban customers under comparable circumstances and that such urban equivalent special construction charges

⁴⁷ Id. at ¶ 672.

are not subject to universal support (beyond any difference between rural and urban rates).

This issue is closely related to the issue of advanced telecommunications and information services and of whether Congress intended that the modernization of networks in rural areas be funded through this mechanism. Ameritech suggests that that was not Congress' intention. Clearly, including the build-out of high capacity and other advanced telecommunication service systems in rural areas in this support mechanism would quickly expand the fund beyond all reasonable proportions. Already, there has been some concern expressed at the magnitude of the cap placed on the schools and libraries fund.⁴⁸ The cost of expanding carrier networks to accommodate high capacity services in a significant number of rural central offices could make the \$2.25 billion cap on the schools and libraries fund look minuscule by comparison.

Further, such a mechanism could not be "competitively neutral" in any sense of the word. To the extent that a carrier can obtain universal service funds to finance its network modernization programs in rural areas, it would be free to devote corporate funds to competitive services in other areas.

Also, such a result would actually work to penalize those carriers and states (and their consumers) that are already implementing network modernization programs. In many states, for example, agreements have been reached between carriers and regulators regarding incentive regulation or other regulatory frameworks. In exchange,

⁴⁸ Representative Jack Fields, in his speech to NARUC last month, called the cap "breathtaking" and said, "The recommended size of the school and library portion of universal service is beyond Congressional intent."

carriers commit to invest in network modernization for the entire state including rural areas. For example, in certain states, Ameritech has entered into such infrastructure development plans. The specific terms of each plan differ; however, the “consideration” on the part of the state was the abandonment of the former cost of service regulation that might have produced lower rates in the short run. It would be manifestly unfair at this point to those states and their constituents who have already entered into these types of agreements to permit other states to finance network modernization on the backs of all ratepayers nationwide.

Moreover, the fact that many states have already entered into these infrastructure development plans indicates that the “market” is moving in the direction of providing advanced services to rural areas in any event.

Therefore, the Commission should clarify that infrastructure development was not what was contemplated when Congress directed universal service support for rural health care providers.⁴⁹

C. Restrictions on Health Care Providers.

As it did in the case of schools and libraries, the Joint Board has recommended that reasonable restrictions be placed on rural health care providers’ eligibility for support. The Joint Board has appropriately recommended that each rural health care

⁴⁹ It is not Ameritech’s position that infrastructure development is not a proper subject for Commission consideration. However, that issue appears to be more appropriately addressed in the context of §§ 706 and 708 of TA 96 -- not in the very specific context of the universal service funding provisions of § 254.

provider making a request for universal service certify initially (and annually thereafter):

- (1) the definition of health care provider under which it falls;
- (2) that the requester is located in a rural area;
- (3) that the services requested will be used solely for the purposes of the provision of health care or instruction that the provider is legally authorized to provide;
- (4) that the services will not be resold; and
- (5) the full details of any co-purchasing arrangements.⁵⁰

Such a step is reasonable and a small price to pay for the privilege of a rural health care provider to obtain support from the fund.

The Joint Board further appropriately recommends that an absolute restriction on resale of supported services be imposed.⁵¹ As noted above, as applicable to schools and libraries, restricting resale will preclude both the health care provider from making a “profit” off of supported services and non-eligible parties from benefiting from supported services.

Finally, the Board recommends allowing carriers only to treat amounts eligible for support in this area as a offset to the carrier’s universal support obligation and not to allow reimbursements from the fund.⁵² It must be clear, however, that these support amounts are included in the calculation of the fund requirements and any applicable

⁵⁰ Recommended Decision at ¶ 725.

⁵¹ Id. at ¶ 735.

⁵² Id. at ¶ 716.

limits in the first instance. Otherwise, providing a contributing carrier with a credit will do nothing but leave the fund short.

VI. UNIVERSAL SERVICE CONTRIBUTIONS.

The Joint Board has recommended that carriers be assessed contributions to the universal service fund based on their gross telecommunications revenues net of payments to other carriers.⁵³ The Joint Board rejected the suggestion that gross retail revenues would be more appropriate although it admitted that retail revenues would eliminate the “double payment” problem.⁵⁴ Ameritech expresses no opinion on this recommendation as long as it is administered equitably and in a competitively neutral manner.⁵⁵

Competitive neutrality, however, must mean, at a minimum, that there are no unequal regulatory restrictions on carriers’ ability to flow these costs through in their rates.⁵⁶ One way to further competitive neutrality in this regard would be to provide that increased contribution levels be regarded as exogenous cost changes for price cap carriers and, if intrastate support is involved, to require that state rate freeze plans be modified to permit flow-through. Nonetheless, the jurisdictional ambiguity of services offered by nondominant carriers would afford them a greater variety of cost recovery options than would be available to ILECs. For this reason, the Commission should seriously consider requiring that the cost of universal service support be recouped by

⁵³ Id. at ¶ 807.

⁵⁴ Id. at ¶ 811.

⁵⁵ See also section VII, infra, regarding questions about the jurisdictional nature of the allocator.

⁵⁶ See Cherry-Wildman Report. Ameritech accepts the fact that there may be market limitations; however, if the burden is assessed equitably, it should affect all market participants proportionally.

carriers only via specific surcharges on their bills. Although contrary to the Joint Board's recommendation,⁵⁷ such a requirement would help ensure competitive neutrality and is consistent with the statute's prescription that the universal service funding mechanism be "specific," "explicit," "equitable," and "nondiscriminatory."⁵⁸ It would have the additional benefit of "levelizing" the impact of universal service funding on the purchasers of telecommunications services.

VII. JURISDICTIONAL ISSUES.

With respect to schools and libraries, the Joint Board has recommended that the Commission clarify that it can provide federal universal service support to fund intrastate discounts.⁵⁹ It also recommended that the Commission adopt rules providing for discounts to the recommended levels for schools and libraries on both interstate and intrastate services and that the state be required to establish intrastate discounts at least equal to the discounts on interstate services as a condition of federal universal service support for schools and libraries in that state.⁶⁰ However, the structure of §254 generally suggests that it was the intent of Congress that the Commission and the states each administer separate funds dealing with the services and costs appropriate to their

⁵⁷ The Joint Board rejected funding "through the SLC or retail end-user surcharge." (¶ 812). That, however, cannot be interpreted as precluding carriers from recovering these costs in charges to their customers. Such an interpretation, of course, would border on unconstitutional confiscation.

⁵⁸ §§ 254(d), (e), and (f).

⁵⁹ Id. at ¶ 573.

⁶⁰ Id.

respective jurisdictions.⁶¹ From a jurisdictional standpoint, a fund that recovers solely interstate costs or supports solely interstate services could appropriately be funded by a charge assessed to providers of interstate services based on those providers' interstate revenues. As noted in the Cherry-Wildman Report, the inclusion of intrastate revenues into the assessment allocator would violate principles of competitive neutrality.⁶²

Ameritech would have no objection to combining such funds into a single national fund if steps were taken to ensure:

- that carriers not be double funded
- that contributors are not double charged for their contributions to the fund
- that, where appropriate, caps are observed⁶³
- that carriers may recoup these costs via surcharges in each respective jurisdiction.

However, the complexity of appropriately constructing a combined federal/state funding mechanism cannot be minimized. A combined federal/state fund could appropriately be funded by an assessment based on total net revenues from telecommunication services. However, it would have to be assessed to both interstate and intrastate carriers; and those carriers must be permitted to recoup the additional cost via surcharges in each jurisdiction.

⁶¹ See, e.g., §254(d) and §254(f).

⁶² For example, a carrier with \$1 million of intrastate business and \$1 of interstate business would be assessed on \$1,000,001 of revenue while a competitor with \$1 million of intrastate business and \$0 of interstate business would not be assessed at all.

⁶³ E.g., it must be clear that the \$2.25 billion cap on educational funding is a combined state and interstate cap.

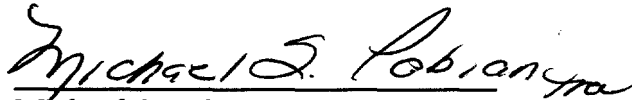
There would be a problem, of course, if a state were to set up its own fund and, therefore, not participate in the joint fund. Should revenues from intrastate business in that state be excluded from the basis of the assessment? What about revenues from interstate services that originate or terminate in that state? Should carriers that do business solely in that state be excluded from the assessment?

Ameritech suggests that the Commission give serious consideration to these issues before concluding that it should do something more than establish a federal pool which supports only interstate service costs and is funded by assessments solely on interstate revenues.

VIII. CONCLUSION.

While the Joint Board's Recommended Decision is well-done in many respects, several changes are necessary to reconcile it with the principle of competitive neutrality and to ensure the universal service fund's long-term sustainability.

Respectfully submitted,



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Dated: December 19, 1996

CERTIFICATE OF SERVICE

I, Todd H. Bond, do hereby certify that a copy of the foregoing Comments of Ameritech on Joint Board Recommendation has been served on the parties on the attached service list, via first class mail, postage prepaid, on this 19th day of December 1996.

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